

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL GREEN,
Petitioner,
v.
KATHLEEN ALLISON,
Respondent.

No. 2:22-cv-01423-EFB (HC)

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner, a state prisoner proceeding without counsel, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On November 28, 2022, the court reviewed the petition pursuant to Rule 4 of the Rules Governing Habeas Corpus Cases Under Section 2254. ECF No. 5. The court found that it was plain from the petition and its appended exhibits that petitioner was not entitled to federal habeas relief because the petition was barred by the statute of limitations. *Id.* Thus, the court ordered petitioner to show cause why the court should not summarily dismiss the petition as untimely. *Id.*

On December 14, 2022, petitioner filed a one-sentence document styled “Request for Stay,” stating that a “change in law related to issue presented [a]ffects sentencing and petitioner must first present argument to superior court to exhaust AB177 and AB1869.” ECF No. 6. Petitioner’s filing is not responsive to the order to show cause. To the extent petitioner requests a

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1 stay to exhaust claims in state court, the request must be denied, as it would be futile to stay an
2 action that is barred by the statute of limitations.

3 Accordingly, it is ORDERED that the Clerk of the Court randomly assign a United States
4 District Judge to this action.

5 Further, it is RECOMMENDED that petitioner's request for a stay (ECF No. 6) be
6 DENIED and that this action be DISMISSED for the reasons set forth in the November 28, 2022
7 order to show cause (ECF No. 5).

8 These findings and recommendations are submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
10 after being served with these findings and recommendations, any party may file written
11 objections with the court and serve a copy on all parties. Such a document should be captioned
12 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
13 shall be served and filed within fourteen days after service of the objections. Failure to file
14 objections within the specified time may waive the right to appeal the District Court's order.
15 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.
16 1991). In his objections petitioner may address whether a certificate of appealability should issue
17 in the event he files an appeal of the judgment in this case. *See* Rule 11, Federal Rules Governing
18 Section 2254 Cases in the United States District Courts (the district court must issue or deny a
19 certificate of appealability when it enters a final order adverse to the applicant).

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21 Dated: January 5, 2023.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE